

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 8, 1998

UNITED STATES OF AMERICA)	
Complainant,)	8 U.S.C. 1324c Proceeding
)	OCAHO Case No. 98C00064
v.)	
)	
MARCOS INIGUEZ-CASILLAS)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER OF JUDGMENT BY DEFAULT

Appearances: Frederick E. Newman, Esq.
 Immigration and Naturalization Service for complainant

Marcos Iniguez-Casillas, pro se

Before: Honorable Ellen K. Thomas

PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act as amended, 8 U.S.C. § 1324c (INA or the Act). The United States Department of Justice, Immigration and Naturalization Service (INS or complainant) filed a complaint on April 6, 1998, alleging that Marcos Iniguez-Casillas (Iniguez or respondent) possessed and used a fraudulent alien registration card (green card) number A 52 084 141 and a fraudulent social security card number 526-56-4131 after November 29, 1990 to satisfy a requirement of the INA. Iniguez' only response to the complaint was a letter received on May 6, 1998, which stated that he agreed to pay \$500. He also said in the letter that he had been "granted a pardon" in May 10, 1995 court appearance, although the nature of neither the pardon nor the court proceeding was made clear.

On June 2, 1998, the parties jointly filed a motion entitled "Withdrawal of Hearing Request and Joint Motion to Dismiss Complaint and Terminate Proceedings Before ALJ." Accompanied the motion was a photocopy of Iniguez' check for \$500 and a proposed settlement agreement setting forth the terms of their agreement, one of which was that Iniguez conceded the violations and withdrew his request for hearing. The proposed agreement also provided that INS would issue a final and unappealable order having the "same force and effect as an Order made after a full hearing."

I issued an Order of Inquiry on June 12, 1998 requesting the parties to describe the circumstances surrounding the proposed settlement in order to determine whether Iniguez' waiver of his right to a hearing was voluntary and knowing as required by Walters v. Reno, 145 F.3d 1032, 1037 n.2 (9th Cir. 1998). Walters affirmed the holding of a district court in a nationwide class action that the INS' use of a particular waiver form violated an alien signer's right to due process of law because the form failed to "simply and plainly communicate the nature and consequences of the . . . charges and procedures for contesting them." Id. at 1053 (emphasis added). Although Iniguez is not a member of the class certified in Walters, my understanding of the concerns expressed by both the Ninth Circuit and the district court in that case suggest that some inquiry as to the circumstances of a respondent's waiver of his right to a hearing is required.

Iniguez made no response to the Order of Inquiry. INS responded, but made no comment on the circumstances surrounding the settlement. Rather, it sought to withdraw the proposed settlement and to obtain a default judgment based on respondent's failure to file an answer. INS also indicated that it would contemporaneously return the uncashed \$500 check to Iniguez.

On August 26, 1998, I issued an order taking INS' request for default judgment under advisement, giving respondent 30 days from the date of the order to file an answer, and setting out the potential immigration consequences of a default judgment. The return receipt card indicates that the order was signed for at Iniguez' address on September 10, 1998. No response has been made.

II. APPLICABLE LAW

The OCAHO Rules of Practice and Procedure¹ provide that failure to answer a complaint shall be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint. 28 C.F.R. § 68.9(b). The administrative law judge may thereafter enter a judgment by default. Id.

The purpose of a default judgment is to protect a diligent party from delay caused by an essentially unresponsive party. See generally 10 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice & Procedure § 2681, at 401-02 (2d ed. 1990). Iniguez was put on notice of the consequences and has not taken the opportunity provided to respond. I therefore find that a default judgment should issue and accept as true all the factual allegations of the complaint.

INS has requested a total of \$500 for two violations. Because this represents the statutory minimum of \$250 per violation I am without authority to decrease it. There is no basis in the record upon which to increase it. Accordingly, I find it to be reasonable.

III. FINDINGS, CONCLUSIONS, AND ORDER

¹ Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1997).

I have considered the record in this case, on the basis of which I find and conclude that:

- A. Complainant's Motion for Default Judgment is granted.
- B. Marcos Iniguez-Casillas violated 8 U.S.C. § 1324c(a)(2) after November 29, 1990, by possessing and using a fraudulent alien registration card (green card) number A 52 084 141 and a fraudulent social security card number 526-56-4131 to satisfy a requirement of the INA.
- C. Respondent shall pay a civil money penalty of \$250 each for the two violations described in the Complaint, or a total of \$500.
- D. Respondent shall cease and desist from violating 8 U.S.C. § 1324c(a)(2).

SO ORDERED.

Dated and entered this 8th day of October, 1998.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324c(d)(4); 1324c(d)(5), and 28 C.F.R. § 68.53.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October 1998 I have served copies of the foregoing Final Decision and Order of Judgement by Default on the following persons at the addresses indicated.

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